

The House Committee on Judiciary Non-civil offers the following substitute to HB 395:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 3 of Chapter 8 of Title 42 of the Official Code of Georgia Annotated,  
2 relating to probation of first offenders, so as to clarify first offender status and provide duties,  
3 obligations, and responsibilities for the clerk of court, the probation department, and the  
4 Department of Corrections; to specify entities to whom first offender information shall be  
5 provided; to change the provisions relating to first offender dispositions and the release of  
6 records thereof; to amend Code Section 35-3-34 of the Official Code of Georgia Annotated,  
7 relating to disclosure and dissemination of criminal records to private persons and  
8 businesses, so as to conform a cross-reference; to amend Code Section 16-11-131 of the  
9 Official Code of Georgia Annotated, relating to possession of firearms by convicted felons  
10 and first offender probationers, so as to conform a cross-reference; to provide for related  
11 matters; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Article 3 of Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to  
15 probation of first offenders, is amending by revising Code Section 42-8-60, relating to  
16 probation prior to adjudication of guilt, violation of probation, and judicial review of a  
17 defendant's criminal record, as follows:

18 "42-8-60.

19 (a) Upon a verdict or plea of guilty or a plea of nolo contendere, but before an adjudication  
20 of guilt, in the case of a defendant who has not been previously convicted of a felony, the  
21 court may, without entering a judgment of guilt and with the consent of the defendant,  
22 defer further proceeding and:

23 (1) ~~Defer further proceeding and place~~ Place the defendant on probation as provided by  
24 law; or

25 (2) Sentence the defendant to a term of confinement as provided by law.

1 ~~(c)(b)~~ The court shall not sentence a defendant under the provisions of this article ~~and, if~~  
2 ~~sentenced under the provisions of this article, shall not discharge the defendant upon~~  
3 ~~completion of the sentence~~ unless the court has reviewed the defendant's criminal record  
4 as ~~such~~ it is on file with the Georgia Crime Information Center.

5 ~~(b)(c)~~ Upon violation by the defendant of the terms of probation, upon a conviction for  
6 another crime during the period of probation, or upon the court determining that the  
7 defendant is or was not eligible for sentencing under this article, the court may enter an  
8 adjudication of guilt and proceed as otherwise provided by law.

9 (d) Upon completion by the defendant of the terms of probation which shall include the  
10 expiration of the sentence by virtue of the time frame of the sentence passing, upon the  
11 release of the defendant by the court prior to the termination of the period of probation, or  
12 upon the defendant's release from confinement provided the defendant is not serving a split  
13 sentence, the defendant shall be discharged without court adjudication of guilt.

14 (e) It shall be the duty of the probation department that is responsible for supervising a first  
15 offender probationer to notify the clerk of court for the jurisdiction of the court which  
16 imposed the sentence pursuant subsection (a) of this Code section that the first offender  
17 probationer has completed the term of probation or that he or she has been released by the  
18 court prior to the termination of the period of probation. It shall be the duty of the  
19 Department of Corrections to notify the clerk of court for the jurisdiction of the court which  
20 imposed the sentence pursuant subsection (a) of this Code section that a defendant has been  
21 released from confinement.

22 (f) If the probation department or the Department of Corrections fails to notify the clerk  
23 of court as provided in subsection (e) of this Code section or if the probation department  
24 does not seek to have a first offender probationer adjudicated guilty due to a violation of  
25 the terms of probation during the term of the first offender probation, then the first offender  
26 may petition the court for discharge by notifying the clerk of court in writing of such  
27 request. Such writing shall contain the first offender's name, date of birth, case number,  
28 return address, and a copy of his or her sentence. If the court is satisfied with such petition  
29 it shall enter an order discharging the first offender; provided, however, that if the court is  
30 not satisfied with the information provided the court shall provide notice to the first  
31 offender and state and conduct a hearing to determine if discharge should be granted.

32 (g) When the clerk of court is notified by the probation department or the Department of  
33 Corrections that a defendant has completed his or her first offender sentence, or if the  
34 defendant shall stand discharged pursuant to subsection (f) of this Code section, it shall be  
35 the duty of the clerk of court to enter on the criminal docket and all other records of the  
36 court pertaining thereto the following:

'Discharge filed completely exonerates the defendant of any criminal purpose and shall not affect any of his or her civil rights or liberties, except for registration requirements under the state sexual offender registry and except with regard to employment providing care for minor children or elderly persons as specified in Code Section 42-8-63.1; and the defendant shall not be considered to have a criminal conviction. O.C.G.A. 42-8-60.'

Such entry shall be written or stamped in red ink, dated, and signed by the person making such entry or, if the docket or record is maintained using computer printouts, microfilm, or similar means, such entry shall be underscored, boldface, or made in a similar conspicuous manner and shall be dated and include the name of the person making such entry. The criminal file, docket books, criminal minutes and final record, and all other records of the court relating to the offense of a defendant who has been discharged without court adjudication of guilt pursuant to this article shall not be altered as a result of that discharge, except for the entry of discharge thereon required by this subsection, nor shall the contents thereof be expunged or destroyed as a result of that discharge.

(h) Except for the registration requirements under the state sexual offender registry and except as otherwise provided in Code Section 42-8-63.1, the first offender discharge shall completely exonerate the defendant of any criminal purpose and shall not affect any of his or her civil rights or liberties; and the defendant shall not be considered to have a criminal conviction.

(i) No person may avail himself or herself of this article on more than one occasion.

~~(d)~~(j) The court shall not sentence a defendant under the provisions of this article who has been found guilty of or entered a plea of guilty or a plea of nolo contendere for:

- (1) A serious violent felony as such term is defined in Code Section 17-10-6.1;
- (2) A sexual offense as such term is defined in Code Section 17-10-6.2;
- (3) Sexual exploitation of a minor as defined in Code Section 16-12-100;
- (4) Electronically furnishing obscene material to a minor as defined in Code Section 16-12-100.1; or
- (5) Computer pornography and child exploitation, as defined in Code Section 16-12-100.2."

## SECTION 2.

Said article is further amended by revising Code Section 42-8-62, relating to the discharge of a defendant without adjudication of guilt, as follows:

"42-8-62.

~~(a) Upon fulfillment of the terms of probation, upon release by the court prior to the termination of the period thereof, or upon release from confinement, the defendant shall be discharged without court adjudication of guilt. Except for the registration requirements~~

~~under the state sexual offender registry and except as otherwise provided in Code Section 42-8-63.1, the discharge shall completely exonerate the defendant of any criminal purpose and shall not affect any of his or her civil rights or liberties; and the defendant shall not be considered to have a criminal conviction. It shall be the duty of the clerk of court to enter on the criminal docket and all other records of the court pertaining thereto the following:~~

~~"Discharge filed completely exonerates the defendant of any criminal purpose and shall not affect any of his or her civil rights or liberties, except for registration requirements under the state sexual offender registry and except with regard to employment providing care for minor children or elderly persons as specified in Code Section 42-8-63.1; and the defendant shall not be considered to have a criminal conviction. O.C.G.A. 42-8-62."~~

~~Such entry shall be written or stamped in red ink, dated, and signed by the person making such entry or, if the docket or record is maintained using computer print-outs, microfilm, or similar means, such entry shall be underscored, boldface, or made in a similar conspicuous manner and shall be dated and include the name of the person making such entry. The criminal file, docket books, criminal minutes and final record, and all other records of the court relating to the offense of a defendant who has been discharged without court adjudication of guilt pursuant to this subsection shall not be altered as a result of that discharge, except for the entry of discharge thereon required by this subsection, nor shall the contents thereof be expunged or destroyed as a result of that discharge.~~

~~(b) Should a person be placed under on probation or in confinement under this article, a record of the same first offender status shall be forwarded by the clerk of court to the Georgia Crime Information Center, and, if the sentence orders confinement within the Department of Corrections, to that department. Without request of the defendant a Δ~~  
 record of discharge and exoneration, as provided in ~~this Code section~~ Section 42-8-60, shall in every case be forwarded by the clerk of court to the Georgia Crime Information Center. In every case in which the record of probation or confinement shall have been previously forwarded to the Department of Corrections, to the Georgia Crime Information Center, and to the Identification Division of the Federal Bureau of Investigation and a record of a subsequent discharge and exoneration of the defendant has not been forwarded as provided in this Code section, upon the request of the defendant or his or her attorney or representative, the record of the ~~same~~ discharge and exoneration shall be forwarded by the clerk of court to the Georgia Crime Information Center so as to reflect the discharge and exoneration."

### SECTION 3.

Said article is further amended in Code Section 42-8-65, relating to the use of prior finding of guilt in subsequent prosecutions, the release of records of discharge, the modification of

records to reflect conviction, and the effect of confinement sentences where guilt is not adjudicated, by revising subsection (b) as follows:

"(b) The records of the Georgia Crime Information Center ~~shall be modified, without a court order, to show a conviction in lieu of treatment as a first offender under this article whenever the conviction of a person for another crime during the term of probation is reported to the Georgia Crime Information Center. If a report is made showing that such person has been afforded first offender treatment under this article on more than one occasion, the Georgia Crime Information Center may report information on first offender treatments subsequent to the first such first offender treatment as if they were convictions. Such showing treatment as a first offender shall be modified only when a court of competent jurisdiction enters an adjudication of guilt for the offense for which the offender has been sentenced as a first offender. Records of first offender disposition shall not be disseminated by the Georgia Crime Information Center, except to law enforcement or court officials or as authorized by paragraph (2) of subsection (a) of Code Section 35-3-34 and subsection (b) of Code Section 35-3-37, and shall not be available to prospective employers or any other person. If, however, a court of competent jurisdiction adjudicates the defendant guilty while such defendant is on first offender probation, such~~ records may be disseminated by the Georgia Crime Information Center in the same manner and subject to the same restrictions as any other records of convictions."

#### SECTION 4.

Code Section 35-3-34 of the Official Code of Georgia Annotated, relating to disclosure and dissemination of criminal records to private persons and businesses, is amended by revising subparagraph (a)(1)(B) as follows:

"(B) The center may not provide records of arrests, charges, and sentences for crimes relating to first offenders when an offender has been sentenced pursuant to Article 3 of Chapter 8 of Title 42 ~~in cases where offenders have~~ and has been exonerated and discharged without court ~~adjudications~~ adjudication of guilt, except as specifically authorized by Code Section ~~35-3-34.1 or other law~~ 42-8-63.1; and"

#### SECTION 5.

Code Section 16-11-131 of the Official Code of Georgia Annotated, relating to possession of firearms by convicted felons and first offender probationers, is amended by revising subsection (f) and inserting in lieu thereof the following:

"(f) Any person placed on probation as a first offender pursuant to Article 3 of Chapter 8 of Title 42 and subsequently discharged without court adjudication of guilt pursuant to

1 Code Section ~~42-8-62~~ 42-8-60 shall, upon such discharge, be relieved from the disabilities  
2 imposed by this Code section."

3 **SECTION 6.**

4 All laws and parts of laws in conflict with this Act are repealed.